

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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RICHARD ERBY, ET AL.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2:23-cv-02298-SHM-tmp
	)	
STATE OF TENNESSEE, ET AL.,	)	
	)	
Defendants.	)	
	)	

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**ORDER DISMISSING PLAINTIFF STROUD WITHOUT PREJUDICE  
FOR FAILURE TO PROSECUTE AND  
ASSESSING THE \$402 CIVIL FILING FEE**

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On May 10, 2023, Plaintiffs (1) Richard Erby, (2) Robert L. Love, (3) Jerrahmiah J. Rankins, (4) Dangelo C. Reid, (5) Rodricus Brown, (6) LaTerrance Stewart, (7) Antonio Whitmore, Jr., (8) Jutarian D. Malone, (9) Lavell Pennington, and (10) Szumanki Stroud (collectively, the “Plaintiffs”) filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.)

On August 8, 2023, the Court entered an Order Denying Motion to Proceed *In Forma Pauperis*; Directing Plaintiffs to Comply with 28 U.S.C. § 1914(a)-(b) and § 1915(a); and Directing the Clerk to Send Forms to Plaintiffs. (ECF No. 4.) The Court explained that Plaintiffs were proportionately liable for the filing fee. (*Id.* at PageID 79.) Plaintiffs Love, Rankins, Reid, Brown, Stewart, Whitmore, Malone, Pennington, and Stroud were each ordered to “submit, within twenty-one (21) days after the date of this Order, either: (1) the Pro Rata Amount; or (2) a properly completed and executed § 1915(a)(2) application to proceed as a pauper, including (1) an in forma pauperis affidavit and (b) certified copy of the Plaintiff’s inmate trust account statement for the last six (6) months.” (*Id.* at PageID 80, 82.)

On September 6, 2023, Plaintiff Stroud filed a motion for leave to proceed *in forma pauperis*. (ECF No. 5.) On September 28, 2023, he filed a letter notifying the Court of his recent release from jail and his new address. (ECF No. 6.)

On February 12, 2024, Plaintiff Stroud was ordered to “file a non-prisoner *in forma pauperis* affidavit or pay his pro rate share of the civil filing fee within thirty (30) days of the date of this order.” (ECF No. 19 at PageID 249.) The Court warned that “failure to comply in a timely manner with this order will result in dismissal of Plaintiff Stroud from this action without further notice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.” (*Id.*)

Plaintiff Stroud has not complied with the Court’s February 12, 2024 order. The time for compliance has expired. Accordingly, Plaintiff Stroud is DISMISSED without prejudice from this action, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.

Notwithstanding Plaintiff Stroud’s dismissal, the Court is still required to assess the civil filing fee, since the responsibility for paying the filing fee accrues at the time the complaint is filed. *McGore v. Wrigglesworth*, 114 F.3d at 601, 607 (6th Cir. 1997), *partially overruled on other grounds by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *cf. In re Alea*, 286 F.3d 378, 381-82 (6th Cir. 2002) (dismissal of civil action filed by prisoner pursuant to 28 U.S.C. § 1915(g) did not obviate the obligation to pay the filing fee).

It is ORDERED that Plaintiff Stroud forward the pro rata share of the \$402 civil filing fee to the Clerk of this Court.

All payments shall be sent to:

Clerk, United States District Court, Western District Tennessee,  
167 N. Main, Ste. 242, Memphis, TN 38103

and shall clearly identify the Plaintiff's name and the case number as it appears on the first page of this order.

If Plaintiff Stroud fails to abide by these or any other requirements of this order, the Court may impose appropriate sanctions, including a monetary fine or restrictions on Plaintiff Stroud's ability to file future lawsuits in this Court, without additional notice or hearing.

It is also CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a), that any appeal in this matter by Plaintiff Stroud would not be taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED.

IT IS SO ORDERED this 8<sup>th</sup> day of August, 2024.

*/s/ Samuel H. Mays, Jr.*

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SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE